1993

Salt Lake City v. Thomas Parrish : Brief of Appellee

Utah Court of Appeals

NO. 930770

IN THE UTAH COURT OF APPEALS

SALT LAKE CITY, Plaintiff-Appellee, vs. THOMAS PARRISH, Defendant-Appellant.	Case No. 930770-CA (Priority 2)

BRIEF OF APPELLEE

Appeal from a judgement and conviction on charge of battery, a class B misdemeanor, in violation of Salt Lake City Ordinance section 11.08.020, in the Third Judicial Circuit Court in and for Salt Lake County, the Honorable Michael L. Hutchings, Judge, presiding.

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STATEMENT OF JURISDICTION

Jurisdiction is conferred on this Court pursuant to Rule 26(2)(a) of the Utah Rules of Criminal Procedure, and by Utah Code Ann. §78-2a-3(2)(f). These sections allow a defendant in a circuit court criminal action to take appeal from a final order for anything other than a first degree or capital felony.

TEXT OF RELEVANT RULES

Utah Rule of Evidence 403 states:

> **Rule 403. Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.**
> Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence.

Utah Rule of Evidence 404(b) states:

> **Rule 404. Character evidence not admissible to prove conduct; exceptions; other crimes.**
> ...
> (b) **Other crimes, wrongs or acts.** Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Utah Rule of Evidence 608(b) states:

> **Rule 608. Evidence of character and conduct of witness.**
> ...
> (b) **Specific instances of conduct.** Specific instances of conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of a crime as provided in Rule 609, may not be proved by extrinsic evidence. They may however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.
> ... .

STATEMENT OF THE ISSUES

I. Is defendant's prior conviction for disorderly conduct admissible under URE 404(b) for impeachment purposes?

II. Is the defendant's prior conviction for disorderly conduct a proper subject of cross-examination under URE 608(b) for impeachment purposes?

III. Did the probative value of defendant's prior conviction outweigh any unfair prejudice to the defendant?

IV. Even if the admission of the prior conviction was error, was it harmless?

STANDARD OF REVIEW

Questions concerning the admissibility of evidence are questions of law and are therefore reviewed for correctness. State v. Reed, 820 P.2d 479 (Utah App. 1991).

When reviewing a trial court's balancing of the probative value versus unfair prejudice of evidence, an appellate court will only reverse if the trial court's decision was unreasonable as a matter of law. State v. O'Neil, 848 P.2d 694 (Utah App. 1993).

STATEMENT OF THE CASE

The City is satisfied with the statement of the case as offered by the defendant.

STATEMENT OF FACTS

The City is satisfied with the statement of facts as offered by the defendant.

SUMMARY OF ARGUMENT

Under URE 404(b), the prior conviction of the defendant is admissible for impeachment purposes. The conviction is also admissible under URE 608(b). Both provisions allow prior misconduct evidence or prior conviction evidence as impeachment of a defendant's testimony.

The trial court acted reasonably in determining that the probative value of the prior conviction outweighed the danger for unfair prejudice in allowing its admission for impeachment purposes.

Additionally, even if it were error to admit the prior conviction, it was harmless error.

ARGUMENT

I. The conviction of the defendant for disorderly conduct was admissible under URE 404(b) for impeachment purposes.

As a general rule, evidence of prior acts of misconduct of an accused are not admissible to show conformity with the prior acts.

URE 404(b). Rule 404(b) does not exclude evidence unless it fits an exception; rather it allows admission of relevant evidence other than to show merely the general disposition of the defendant. Additionally, if a defendant opens up the subject as to prior incidents, it becomes subject to cross-examination and refutation the same as any other evidence. State v. Lopez, 626 P.2d 483 (1981), O'Neil, 848 P.2d 694 (Utah App. 1993).

In Lopez, the defendant was charged with second degree murder for the death of an individual he had fought with outside a bar. The testimony of the state's witness was that Lopez had kicked the victim in the head while he lay on the ground, fracturing his skull and resulting in his death. Defendant denied kicking the victim in the head. On cross-examination, the prosecutor asked about the details of an earlier fight with a man named Waltz that led to the incident with the defendant. Specifically, the prosecutor asked Lopez if he had kicked Waltz in the head. The question raised an objection by defense counsel, which was overruled, and Lopez answered no. The state then presented a witness who testified that she saw the defendant kick Waltz while he lay on the ground.

Defendant claimed the testimony about the earlier kick was in violation of Rule 55[1] of the Utah Rules of Evidence. The Court

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[1] This rule has since been replaced with Rule 404(b) of the Utah Rules of Evidence, patterned after the Federal Rule. Former Rule 55 read:

> Subject to Rule 47, evidence that a person committed a crime or a civil wrong on a specified occasion, is inadmissible to prove his disposition to commit crime or civil wrong as the basis for an inference that he committed another crime or civil wrong on another specified occasion but, subject to Rule 45 and 48, such

rejected this claim. In analyzing the applicable rules, the court found that Lopez had opened up the subject of the prior fight and that this allowed the state the opportunity to question Lopez about the earlier incident. The court also noted that, because the state's witness and Lopez were in direct conflict with their testimony about a kick to the victim's head, credibility was the critical question in the case. Given this, "there is no impropriety in receiving evidence bearing upon the credibility of the witness." Lopez at 486.

In the case presently before the court, as in Lopez, it was the defendant's denial of certain evidence that opened the door to the city's questioning concerning the prior incident. On direct examination, Parrish indicated that "he expected" to be arrested and that it was "not the first time that's happened." Transcript (T.) at p.19, line (l.) 16. On cross-examination, he indicated that he'd been arrested three times in as many months, in response to the question "why did you expect to be arrested." T. at p.20, l. 18,19. Then, on re-direct examination, Counsel for Parrish asked "at any time have you ever beaten your wife?". T at 21, l. 11. Parrish denied he had.

The denial of Parrish on this question put the prior conviction squarely in issue. In the exchange prior to the court's

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evidence is admissible when relevant to prove some other material fact including absence of mistake or accident, motive, opportunity, intent, preparation, plan, knowledge or identity.

The similarities between the Current 404 and former rule 55 are obvious.

ruling on the objection, the prosecutor clearly stated the evidence was intended to show that Parrish had not been truthful with the court. T. at p. 22 l. 24,25.

As in Lopez, where the case turns on credibility of the witnesses, such evidence is of great value to the trier of fact, and clearly is admissible under URE 404(b), and Lopez.[2]

II. The conviction of the defendant for disorderly conduct is admissible under URE 608(b) for impeachment purposes.

Impeachment evidence is admissible under URE 608(b) if it goes to credibility, even though it introduces evidence which would otherwise be inadmissible. Reed, 820 P.2d 479 (Utah App. 1991).

Parrish appears to concede this is the law on the subject in his brief, but argues that the prior conviction is not impeaching, and thus, not admissible.

This argument ignores the duty of the finder of fact to weigh evidence and determine the value it should be given in reference to

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[2] Parrish argues that Lopez is distinguishable because the evidence in Lopez was directly contrary to the defendant's testimony, where in the case presently before the court, the evidence is not directly in conflict.

The question of how compelling impeachment evidence is goes to the weight to be accorded particular evidence, not the admissibility of the evidence. Whether the trier of fact chooses to accept the evidence as impeachment of the defendant is within their province, but the rules clearly allow the prosecution the opportunity to present such impeachment.

Defendant is not denied the opportunity to explain the circumstances of the prior incident and to reduce the effect of the impeaching testimony or questioning.

See also, Infra, Argument section II.

other evidence presented. Because evidence is subject to varying interpretations does not mean it is inadmissible. Parrish correctly points out that a conviction for disorderly conduct could cover a potentially large area of conduct, some of which would not be impeaching. But some of the prohibited conduct clearly could cast doubt on Parrish's assertion that he had never beaten his wife.

Parrish also argues that because the City presented no evidence to indicate which type of behavior under the disorderly conduct ordinance he was convicted of, the conviction itself is not impeaching. Under the plain terms of URE 608(b), the City was precluded from presenting evidence of the type of conduct the conviction was based on. The rule clearly bars the use of extrinsic evidence to prove the misconduct.[3] The City is limited to the answer Parrish gave on the question. Parrish was still allowed the opportunity to argue to the court the broad nature of the statute or to testify as to the precise behavior the conviction was based on.

Clearly, the question of the prior conviction's value as impeachment evidence is a question of the weight of the evidence, not the admissibility of it.

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[3] The City would not be allowed to use extrinsic evidence to prove the kind of misconduct alleged, and thus, would be "stuck" with the defendant's answer, unless of course the defendant attempted to explain away the prior conviction or minimize its import, in which case the City would be allowed to further probe the details of the incident through extrinsic evidence. See State v. Tucker, 800 P.2d 819 (Utah App. 1990).

III. The probative value of defendant's prior conviction for disorderly conduct outweighs the danger of unfair prejudice and is therefore admissible.

Even though evidence regarding a defendant's prior conviction is admissible under 404(b), it must also meet the requirements of Rule 403. O'Neil, 848 P.2d at 701.

In O'Neil the court noted several factors to be weighed in determining the probative value of evidence as opposed to the danger for unfair prejudice. These include:

> the strength of the evidence as to the commission of the other crime, the similarities between the crimes, the interval of time that has elapsed between the crimes, the need for the evidence, the efficacy of alternative proof, and the degree to which the evidence will probably will rouse the jury to overmastering hostility.

O'Neil at 701.

In assessing these factors in the case before them, the court concluded that the trial court had acted reasonably in allowing the prior conviction. Specifically the court noted that a conviction is the strongest evidence of a crime, that the prior crime and the charged crime were very similar in nature, that three years has passed from the prior conviction and thus the new charge was close in time, and that although there was other evidence, the prior conviction was not barred simply because the state had other evidence.

Similarly, in Parrish's case, the evidence complained of is a prior conviction based on similar events, a domestic dispute. Also, the time between events was minimal, and much less than three

years. Finally, and perhaps most important, Parrish's case was tried to the bench. Thus, there was no danger of overmastering hostility from a jury.

In light of these factors, it is clear the trial court acted reasonably in determining that the probative value of the evidence outweighed the danger of unfair prejudice.

IV. The admission of the defendant's prior conviction was harmless.

It is well-settled law that an appellate court will not reverse a decision of a trial court even where error exists if the error is harmless. Admission of prior bad acts is harmless where there is no reasonable likelihood of a more favorable result absent the admission of the prior bad act. State v. Featherstone, 781 P.2d 424 (Utah 1989).

In the case at hand, it is clear that the admission of the prior conviction was harmless, as the trial judge did not even consider it in his determination of the case. In determining the credibility of the witnesses the court focused on completely separate portions of the testimony, not even considering whether or not the prior conviction was impeaching, but determining the defendant was not credible on a completely different basis, involving other factual discrepancies. T. at p. 27,28.

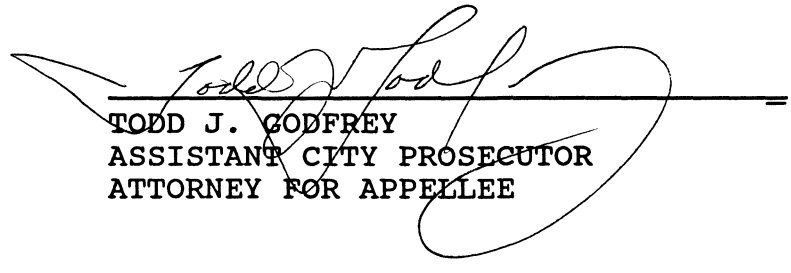
Based on the very clear nature of the court's ruling, there is no reasonable likelihood of a different outcome without the

evidence of the prior conviction.

CONCLUSION

For any or all of the foregoing reasons, the City requests that the decision of the trial court be affirmed and the appeal of defendant denied.

Respectfully submitted this 25 day of May, 1994.



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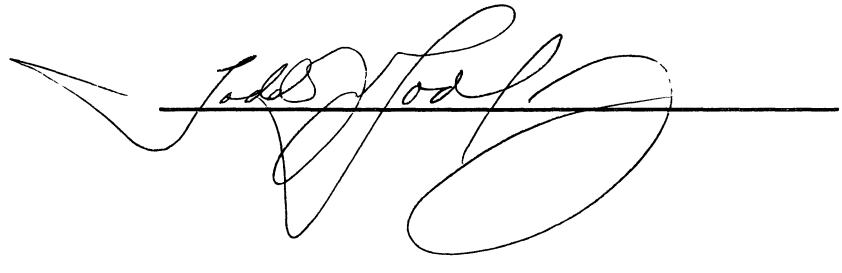
ATTORNEY FOR APPELLEE

CERTIFICATE OF SERVICE

I, Todd J. Godfrey, hereby certify that I have caused eight copies of the foregoing Brief of Appellee to be delivered to the Utah Court of Appeals, 400 Midtown Plaza, 230 South 500 East Salt Lake City, Utah 84102, and four copies to Rebecca C. Hyde, Attorney for Defendant/Appellant, 424 East 500 South, Suite 300, Salt Lake City, Utah 84111, on this 25 day of May, 1994.



ADDENDUM A

(b) **Record of offer and ruling.** The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(c) **Hearing of jury.** In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

(d) **Plain error.** Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

Rule 104. Preliminary questions.

(a) **Questions of admissibility generally.** Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of Subdivision (b). In making its determination it is not bound by the rules of evidence except those with respect to privileges.

(b) **Relevancy conditioned on fact.** When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(c) **Hearing of jury.** Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require, or when an accused is a witness and so requests.

(d) **Testimony by accused.** The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case.

(e) **Weight and credibility.** This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

(Amended effective October 1, 1992.)

Rule 105. Limited admissibility.

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

Rule 106. Remainder of or related writings or recorded statements.

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

(Amended effective October 1, 1992.)

ARTICLE II. JUDICIAL NOTICE.

Rule 201. Judicial notice of adjudicative facts.

(a) **Scope of rule.** This rule governs only judicial notice of adjudicative facts.

(b) **Kinds of facts.** A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) **When discretionary.** A court may take judicial notice, whether requested or not.

(d) **When mandatory.** A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) **Opportunity to be heard.** A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) **Time of taking notice.** Judicial notice may be taken at any stage of the proceeding.

(g) **Instructing jury.** In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

ARTICLE III. PRESUMPTIONS.

Rule 301. Presumptions in general in civil actions and proceedings.

(a) **Effect.** In all civil actions and proceedings not otherwise provided for by statute or by these rules, a presumption imposes on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence.

(b) **Inconsistent presumptions.** If presumptions are inconsistent, the presumption applies that is founded upon weightier considerations of policy. If considerations of policy are of equal weight neither presumption applies.

Rule 302. Applicability of federal law in civil actions and proceedings.

In civil actions and proceedings, the effect of a presumption respecting a fact which is an element of a claim or defense as to which federal law supplies the rule of decision is determined in accordance with federal law.

ARTICLE IV. RELEVANCY AND ITS LIMITS.

Rule 401. Definition of "relevant evidence."

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 402. Relevant evidence generally admissible; irrelevant evidence inadmissible.

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States or the Constitution of the state of Utah, statute, or by these rules, or by other rules applicable in courts of this state. Evidence which is not relevant is not admissible.

Rule 403. Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue

delay, waste of time, or needless presentation of cumulative evidence.

Rule 404. Character evidence not admissible to prove conduct; exceptions; other crimes.

(a) **Character evidence generally.** Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(1) **Character of accused.** Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same;

(2) **Character of victim.** Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

(3) **Character of witness.** Evidence of the character of a witness, as provided in Rules 607, 608, and 609.

(b) **Other crimes, wrongs, or acts.** Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(Amended effective October 1, 1992.)

Rule 405. Methods of proving character.

(a) **Reputation or opinion.** In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(b) **Specific instances of conduct.** In cases in which character or a trait of character of a person is essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.

(Amended effective October 1, 1992.)

Rule 406. Habit; routine practice.

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

Rule 407. Subsequent remedial measures.

When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

Rule 408. Compromise and offers to compromise.

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Rule 409. Payment of medical and similar expenses.

Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

Rule 410. Inadmissibility of pleas, plea discussions, and related statements.

Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

(1) a plea of guilty which was later withdrawn;

(2) a plea of nolo contendere;

(3) any statement made in the course of any proceedings under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the foregoing pleas; or

(4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

Rule 411. Liability insurance.

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

(Amended effective October 1, 1992.)

Rule 412. [Reserved.]

ARTICLE V. PRIVILEGES.

Rule 501. Privileges recognized.

Except as provided in the Constitutions of the United States and the State of Utah, no person shall have a privilege to withhold evidence except as provided by these or other rules adopted by the Utah Supreme Court or by existing statutory provisions not in conflict with them.

(Amended effective April 15, 1992.)

Rule 502. Husband-wife.

(a) **Criminal proceedings.** In a criminal proceeding, a wife shall not be compelled to testify against her husband, nor a husband against his wife.

would be precluded from testifying be received for these purposes.
(Amended effective October 1, 1992.)

Rule 607. Who may impeach.
The credibility of a witness may be attacked by any party, including the party calling the witness.
(Amended effective October 1, 1992.)

Rule 608. Evidence of character and conduct of witness.
(a) **Opinion and reputation evidence of character.** The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.
(b) **Specific instances of conduct.** Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may *not be proved by extrinsic evidence. They may, how*ever, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.
The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination when examined with respect to matters which relate only to credibility.
(c) **Evidence of bias.** Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.
(Amended effective October 1, 1992.)

Rule 609. Impeachment by evidence of conviction of crime.
(a) **General rule.** For the purpose of attacking the credibility of a witness,
(1) evidence that a witness other than the accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and
(2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.
(b) **Time limit.** Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than ten years old as calnotice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.
(c) **Effect of pardon, annulment, or certificate of rehabilitation.** Evidence of a conviction is not admissible under this rule if (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.
(d) **Juvenile adjudications.** Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.
(e) **Pendency of appeal.** The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.
(Amended effective October 1, 1992.)

Rule 610. Religious beliefs or opinions.
Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.
(Amended effective October 1, 1992.)

Rule 611. Mode and order of interrogation and presentation.
(a) **Control by court.** The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.
(b) **Scope of cross-examination.** Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as *if on direct examination.*
(c) **Leading questions.** Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.
(Amended effective October 1, 1992.)

Rule 612. Writing used to refresh memory.
If a witness uses a writing to refresh the witness' memory for the purpose of testifying, either
(1) while testifying, or
(2) before testifying, if the court in its discretion determines it is necessary in the interests of justice,
an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the